IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-09-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

L.P.A.NO.163 OF 2002

1. Rajeswari,
   W/o. Jagannathan

2. Jagannathan
   S/o. Kuppuswamy Naidu . Appellants/ Defendants

Vs.

1. Kannammal,
   W/o. Sundaram Chettiar

2. Ponnarasi,
   D/o. Sundaram Chettiar

3. Rajagopal
   S/o. Sundaram Chettiar . Respondents/ Plaintiffs

Appeal filed under Clause 15 of the Letters Patent against the judgment passed by the leaned single Judge dated 21.3.2002 in A.S.No.1032 of 1987, reversing the judgment dated 5.1.1987 in O.S.No.7642 of 1983, on the file of IV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.S.V. Jayaraman
Senior Advocate for
Mrs.R.T. Shyamala

For Respondents : Mr.R. Mukundan for
M/s. N.S. Varadachari

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J U D G M E N T

P.K. MISRA, J

Defendants are the appellants against the reversing decision.

2. Plaintiffs / Respondents filed the suit for declaration of title, possession and for mesne profits. Such suit having been dismissed, the plaintiffs filed A.S.No.1032 of 1987 before the High Court. Learned single Judge has reversed the

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decision of the trial court and decreed the suit. Hence the present appeal.

3. The facts in brief are as follows :-

The property in question admittedly belonged to one Swami Naidu. He executed a registered deed of settlement dated 2.4.1932 in favour of his son-in-law K. Munuswami Naidu. Munuswami Naidu died leaving behind his two daughters, namely, Nanukannammal and Dadabai Ammal, three sons, namely, Narayana Naidu, Danaraj and Nandagopal, and widow and three sons of a pre-deceased son Kulasekaran, namely, Prasanna Ammal, Murthy, Rajeswara Rao and Amarnath. The sister and the three brothers of Dadabai Ammal and the surviving heirs of deceased Kulasekaran, executed a registered deed of release dated 31.5.1979 in favour of Dadabai Ammal. Dadabai Ammal had two sons, namely, Parthasarathy and Raghu and one daughter, namely, Rajeswari (Defendant No.1). Defendant No.2 is the husband of Rajeswari. On 31.5.1979, Dadabai Ammal executed a registered deed of settlement in favour of her two sons. Subsequently, Dadabai Ammal and her two sons sold the property to one Sundaram Chettiar, the original plaintiff. The present respondents, who were the appellants before the learned single Judge, are the legal representatives of such Sundaram Chettiar.

4. The contention of the plaintiff was that even though he had acquired a valid title, the defendants disturbed his possession. The plea of the defendants was to the effect that the vendors of the plaintiffs did not have exclusive title over the property, the female heirs of Dadabai Ammal are also entitled to equal right and the sale deed dated 11.12.1980 is a fraudulent one and the defendants are in possession.

5. On the basis of the pleadings of the parties, the trial court had framed the following issues :-

"(1) Whether the suit has not been properly valued ?

(2) Whether the settlement deed dated 2-4-32 is not valid ?

(3) Whether the release deed dt. 31-5-79 is not valid and binding ?

(4) Whether the settlement deed dated 31-5-79 was brought about by undue influence ?

(5) Whether the sale deed in favour of the Plaintiff is not valid ?

(6) Whether D1 is the owner and has got title to the suit property ?

(7) Whether the 2nd Defendant is not a proper party ?

(8) Whether the Plaintiff is entitled to mesne profits, if so to what extent ?

(9) To what relief if any the Plaintiff is entitled? "

6. Under Issue No.2, the trial court found that the deed of settlement dated 2.4.1932 had been executed and was as such valid. While discussing under the other relevant Issue Nos.3,4 and 5, the trial court held that the first defendant being the daughter of Dadabai Ammal was also entitled to a share and that the release deed dated 31.5.1979 in favour of Dada Bai Ammal and

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the settlement deed by her were invalid. (This finding was obviously on the supposition that in the settlement deed dated 2.4.1932 restrictions had been imposed on the rights of the heirs of Munuswami Naidu). It was further held that the plaintiff did not get a valid title.

7. Learned single Judge by referring extensively to the terms of settlement dated 2.4.1932 came to the conclusion that in view of Section 10 of the Transfer of Property Act, the condition in the deed of settlement to the effect that after the death of Munuswami Naidu his heirs will also have life estate and had no right to alienate was void. On that basis, it was held that after the death of Munuswami Naidu, his surviving heirs succeeded to the property and subsequently by virtue of the release deed, Dadabai Ammal alone became the owner and therefore she could execute the deed of settlement in favour of her sons and accordingly the sale deed in favour of the plaintiffs was valid.

8. Learned Senior Counsel appearing for the defendants / appellants submitted that in view of Section 14 of the Transfer of Property Act, it should be held that the deed of settlement Ex.A-1 was hit by the principles relating to the Rule against perpetuity and as such the document was void and the plaintiffs did not get any right.

9. Learned counsel appearing for the plaintiffs / respondents, on the other hand, has submitted that the learned single Judge has rightly applied the principle of Section 10 of the Transfer of Property Act and therefore has rightly observed that the condition contained in the subsequent clause creating embargo on alienation of the property by the subsequent heirs must be taken to be void.

10. After carefully considering the submission made by the learned Senior Counsel for the appellants, we do not think the contention raised can come to the aid of the appellants.

If the contention of the appellants to the effect that the deed of settlement is hit by the Rule against perpetuity is accepted and the transfer is held to be inoperative, on the death of K. Munuswamy Naidu, who admittedly received a life estate, the property would be inherited either by the heirs of the original owner or those of K. Munuswamy Naidu. There is no dispute that the said Swami Naidu had only one daughter, namely, the wife of K. Munuswami Naidu. In other words, the heirs of K. Munuswami Naidu were also the successors of the last absolute owner, namely, Swami Naidu. Obviously during the lifetime of Dadabai Ammal, who was the daughter of K. Munuswami Naidu, Defendant No.1, the daughter of Dadabai Ammal, has no independent right and could not have inherited either as heir of Swami Naidu or heir of Munuswami Naidu. Since all other heirs had executed a registered deed of release in favour of Dadabai Ammal, it can be concluded that the property ultimately vested with Dadabai Ammal and since Dadabai Ammal along with her sons executed the sale deed, no right can be claimed by Defendant No.1. It is not the case of Defendant No.1 that she was one of the heirs who succeeded to the property either

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on the death of the original owner Swami Naidu or on the death of Munuswami Naidu. Therefore, acceptance of the contention of the appellants regarding applicability of Section 14 of the Transfer of Property Act would not come to the aid of the appellants in any manner.

11. The alternative submission that a life estate was created in perpetuity firstly in respect of Munuswami Naidu and subsequently in respect of his heirs in perpetuity and, therefore, such heirs, including Dadabai Ammal, had no right to alienate the property, cannot be accepted, as such an interpretation would be obviously against the provisions contained in Section 10 of the Transfer of Property Act as has been observed by the learned single Judge. In that case it can be held that life estate was created in favour of Munuswamy Naidu and thereafter the property was with the successors, but the restriction relating to alienation must be held to be void as has been observed by learned single Judge. Acceptance of such conclusion of the learned single Judge results in dismissal of the appeal.

12. Since Defendant No.1 has no independent right and whatever right she can claim is only through and after the death of her mother and since her mother herself has executed the sale deed, her contention cannot be accepted unless it is held that the mother had only a limited right over the property.

13. Learned counsel appearing for the respondents has placed reliance upon the decision of the Supreme Court reported in AIR 1963 SC 890 (RAMKISHORELAL AND ANOTHER v. KAMALNARAYAN) and AIR 1985 SC 1359 (A. SREENIVASA PAI v. SARASWATHI AMMAL alias G. KAMALA BAI) in support of his submission that all efforts should be made to give effect to the intention of the original settlor and it must be held that the subsequent clause restricting the right of alienation should not be given effect to.

14. In view of the conclusion reached by us that even assuming that the appellants' contention regarding applicability of Section 14 is correct, the property devolved only upon the very same legal heirs, it is not necessary to delve further into this aspect. Therefore, considering the question from any angle, we do not find any scope to interfere with the decision of the learned single Judge and the appeal is liable to be dismissed. There would be no order as to costs so far as the present appeal is concerned.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Sub Assistant Registrar, Judicial Department,
 High Court, Madras.

2. The Registrar,
City civil Court, Madras.

3. The Record-keeper, V.R. Section, High Court, Madras.

1 cc to Mr.N.S. Varadachari, Advocate, Sr. 46527
1 cc to Mr.N. Maninarayanan, Advocate, Sr. 46278

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